

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3264 of 1990

with

CIVIL APPLICATION No 10948 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KISHORE R PARIKH

Versus

R M DESAI

Appearance:

1. Special Civil Application No. 3264 of 1990
Mr Nagesh Sood for M/S TRIVEDI & GUPTA for Petitioner
MR BHARAT J SHELAT for Respondent No. 1
MR DARSHAN M PARIKH for Respondent No. 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: /12/2000

1. The petitioner was serving as an officer in bank of Baroda at its Palej Branch between 12.7.1985 and 9.5.1987. A disciplinary inquiry was instituted against him in accordance with regulation 3 read with 24 of the Bank of Baroda Officers/ Employees (Conduct) Regulations, 1976. The allegations leading to framing of charges against him inter alia were that certain amounts given to him by bank customers Yunus Mohmed Sodawala and Farook Yunus Sodawala for deposit in their accounts and crediting in their accounts were not deposited by the petitioner. He entered credit entries in the passbooks of various accounts of the parties but no corresponding voucher entries were made in the branch's books/ records. He thus misappropriated funds upto Rs.26,700/- given to him by the bank's customers and betrayed their trust in him. He misled the customers by making fictitious entries in their passbooks. The Inquiry Officer by his detailed report held the allegations proved against the petitioner, whereupon, by the impugned order dated 24.11.1988, he was dismissed from bank's services. The appeal preferred by the petitioner to the appellate authority under Regulation 17 of the Regulations was also dismissed on 24.11.1989. The petitioner, then, approached this court.

2. On the basis of the inquiry, a criminal complaint was lodged in the court of the Judicial Magistrate, First class, Bharuch for an offence under section 408 of the Indian Penal Code. The criminal case was instituted much after conclusion of the inquiry in the year 1991. Learned Judicial Magistrate, First class, Bharuch by his judgment dated 19.4.1991 acquitted the petitioner of the alleged offence of breach of trust under section 408 of the IPC. It is informed by the petitioner that the appeal preferred by the State of Gujarat against his acquittal also came to be rejected by this court by rejecting leave for appeal by an order dated 8.4.1992. By Civil Application No.10948 of 2000, the petitioner is seeking amendment of the petition to bring on record the subsequent events of his acquittal of the criminal charge by the criminal court and rejection of leave to appeal by this court. The said application is being allowed by me.

3. Learned counsel appearing for the petitioner in assailing the disciplinary proceedings and the order of punishment of dismissal, firstly submits that on the same allegations and charges, the petitioner having been acquitted by the criminal court, the findings and

conclusions drawn against the petitioner in the inquiry proceedings cannot be allowed to stand. Very strong reliance has been placed on the decision of the Supreme court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Limited and another, AIR 1999 SC 1416.

4. Taking up the first ground urged for consideration, I have gone through the judgment of acquittal of the criminal court and the decision of the Supreme court in the case of Anthony (supra). From the judgment of the criminal court of acquittal, I find that the learned Magistrate was of the view that for proof of charge of criminal breach of trust, entrustment of the amount by the depositors to the petitioner was the most important ingredient of the offence which the prosecution failed to prove. Prosecution's failure to examine account holders has also been taken note of and given importance. The inquiry report has been annexed with the petition. In the departmental proceedings, the charge against the petitioner has been held proved on the documents produced by the officers of the bank who were examined to prove that in the saving bank accounts and entries of the passbooks, the petitioner had put his initials acknowledging receipt of the amount for deposit. The disciplinary authority has also taken note of the fact that depositor Sodawala had addressed a letter to the bank stating that since he had received back the amount, no action be taken against the petitioner. Before the inquiry officer, there was overwhelming evidence which was appreciated in light of banking procedure that the petitioner who was posted at the relevant time in the Branch had received the amount for deposit and did not credit the same in the corresponding ledger accounts of the Bank. Subsequent acquittal of the petitioner by the criminal court of charge under section 408 of the IPC would not necessarily invalidate the disciplinary inquiry and final punishment imposed thereon. In the case of Capt. Anthony (supra), the Supreme court reviewed the entire case law on the subject to come to the conclusion that in each case, the court has to address itself to the question as to whether charge and evidence in the departmental inquiry and criminal case are the same and whether the disciplinary authority can be allowed to sit over the judgment of the criminal court. Standard of proof in a criminal case is strict i.e. the case should be proved 'beyond all reasonable doubt'; whereas, in the disciplinary inquiry, no such high standard of proof is insisted upon and strict rules of Evidence Act are also not applicable. In the instant case, criminal misappropriation of the amount deposited by the customers to the petitioner was one of

the charges along with the officers that having received the amount and shown its credit in the passbook by putting his initials, he did not make corresponding entries in the ledger and voucher as per the banking procedure. It cannot, therefore, be held that the charges in the criminal case and the departmental inquiry were fully identical and on some or similar set of facts. It cannot also be lost sight of that the petitioner was acquitted by the criminal court as the prosecution failed to prove entrustment of cash by the customers to the petitioner. According to the criminal court, examination of the depositors was necessary for proving the charge. For failure of the prosecution to prove the charge, the action taken by the disciplinary authorities in the matter of services of the petitioner cannot be faulted. As has been mentioned above, in the departmental inquiry, the customer had sent a letter to the bank not to proceed against the petitioner as the amount had been recovered by him. The charge against the petitioner was, however, proved on the basis of his proved handwriting in the passbook and recurring deposit account. His signatures were duly identified by all those who had seen him signing. There were also other incriminating circumstances to show that the petitioner attempted to retain the cash deposited with him by the customers. In these circumstances, it cannot be held that acquittal of the petitioner by the criminal court for failure of the prosecution to lead necessary evidence would necessarily nullify all action taken in the disciplinary inquiry. The case of Capt. Anthony (supra) on which heavy reliance has been placed is clearly distinguishable on facts. In that case, the Superintendent of police had raided the residential premises of the employee and recovered mining sponge gold ball. It was on that basis that criminal case was lodged against him and on the same set of facts, departmental proceedings were instituted by Bharat Gold Mines Company, as employer. The inquiry was conducted ex-parte against him and he was held guilty. He was dismissed from service. In the criminal case, on the facts revealed in the same alleged raid conducted at the appellant's residence, the criminal court came to the conclusion that no search was conducted nor any recovery was made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. It is in these facts that the Supreme court observed:

"In this connection, therefore, where the

appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the finding recorded at the ex-parte departmental proceedings to stand." (emphasis supplied.)

Here, the petitioner was found to have acknowledged receipt of the amount from the customers and his initials were found in the passbook. There was evidence to show that he failed to make corresponding entries in the ledger and other bank records. Merely because the charge of misappropriation under section 108 of the IPC was not found proved in the criminal case, it cannot be held that the whole departmental action which was taken after giving due opportunity of defence to the petitioner, was nullified. Here, the whole departmental action was completed much before the order of acquittal of the criminal court. For failure of prosecution if any in leading evidence, the disciplinary action earlier taken cannot be set aside. See following observations in Corporation of Nagpur vs. Ramchandra G Modak, AIR 1984 SC 626 :

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges, it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However, merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor its discretion in any way fettered."

5. The ground therefore, urged against the departmental action on the basis of subsequent acquittal of the petitioner by the criminal court has to be rejected.

6. Learned counsel for the petitioner then made some attempt to assail the finding reached by the Inquiry Officer. This court, sitting under Article 226 of the Constitution of India, would not reappreciate the evidence led in the inquiry and come to its own

conclusion. The argument that customers alleged to have paid cash to the petitioner were not examined and, therefore, there was no evidence against the petitioner, has also no merit. As has been stated by the Inquiry Officer, the depositor had written a letter to the bank that no action be taken against the petitioner as the amount has been received back by him. The department, therefore, cannot be criticised for not examining the customers as witnesses in the case. The staff members engaged at the branch who had occasion to see writing and initials of the petitioner were examined and on scrutiny of bank records, they testified that it was the petitioner who had received the cash, made entries in the passbook but did not make corresponding entries in other bank documents and did not credit the amount in bank.

7. Lastly, learned counsel submitted that acquittal of the petitioner by the criminal court in the case is a mitigating circumstance and this court should hold the punishment of dismissal as disproportionate and interfere with the same. As has been stated above, acquittal by the criminal court is based on failure of the prosecution to prove the fact of entrustment of cash by the customers to the petitioner. This is not a case of an honourable acquittal. There is mention in the order of the Inquiry officer as also in the order of the appellate authority that on similar misconduct, the petitioner was earlier proceeded against departmentally and was punished with dismissal from service. He approached this court by a writ petition and the matter was remanded to the disciplinary authority to consider the question of quantum of punishment. Thereafter, the disciplinary authority of the bank reduced the punishment from dismissal to stoppage of four increments with cumulative effect by an order passed on 23.9.1983. The petitioner has now repeated similar misconduct and cannot be allowed to be dealt with leniently. Reputation of bank is of utmost importance and so also integrity and honesty of its officers as they have to deal with public and their monies (see *Tarachand Vyas vs. Chairman and Disciplinary Authority*, (1997) 4 SCC 565).

As a result of the aforesaid discussion, I find no merit in this petition. It is accordingly dismissed but in the circumstances, I make no order as to costs. Civil Application also stands disposed of. Rule is discharged.

(D. M. Dharmadhikari, C.J.)

